IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.R. No. 135 of 2003.

Judgment reserved on: 16.11.2007

Date of Decision: November 23, 2007

Smt.Jai Devi … Petitioner.

Versus

Smt. Harbansi Devi & anr. … Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?

For the Petitioner(s) : Mr. Anand Sharma, Advocate.

For the Respondent(s) : Mr. J.R.Thakur, Advocate, for respondent No.1.
Mr. R.M.Bisht, Deputy Advocate General for Respondent No.2.

Deepak Gupta, J

This revision petition under Section 115 of the Code of Civil Procedure is directed against the order dated 5.4.2003 passed by the learned District Judge, Hamirpur in Civil Suit No. 5 of 2003, whereby permission has been granted to respondent No1/plaintiff to sue as an indigent person.

The brief facts of the case are that the plaintiff filed a suit in forma pauperis. She along with the suit filed an application under Order 33 rule 1 CPC. The allegations of the petitioner are that she is an old lady not having sufficient means to maintain herself and facing starvation. The petitioner-defendant is the sister of the plaintiff-respondent No.1. The plaintiff who was the owner of a large extent of land measuring more than 25 kanals gifted a

major portion of her land in favour of her sister on 27.8.1991. According to the plaintiff, the defendant had promised to look after and maintain the plaintiff but since she did not do so, she had no option but to file a suit for grant of maintenance. Initially, the suit was filed in the Court of Sub Judge Ist Class, Barsar. This was returned since the Sub Judge did not have the pecuniary jurisdiction to hear the suit. Thereafter the plaintiff filed a fresh petition and suit before the learned District Judge, Hamirpur. The same was filed on 10.10.2002 and it was recorded as follows:-

> "Presented by Shri S.C.Chauhan, Advocate, for the applicant-plaintiff.
> OR on 23.10.2002."

Thereafter the office made the report and found the application to be in order.

On 23.10.2002, the Court marked the presence of the counsel for the applicant. However, a perusal of the order-sheet shows that the statement of the applicant-plaintiff was recorded in which she stated that she had no income other than the wearing apparels and utensils and she was not possessed of any property. The court referred the matter to the Collector and also issued notice to the defendant-petitioner.

On 9.12.2002, the defendant was duly represented by her counsel. The Court recorded that the report of the Collector had not been received. It was thereafter listed for filing of the report and objections, if any. The petitioner, meanwhile, filed reply to the application. Report from the Collector was received and the Collector recorded that in fact the petitioner is owner and in possession of land measuring 4 kanals 9 marlas. The Collector reported that from this land, the petitioner is having annual

income of Rs.2700/- per annum and in addition, she is getting Rs.150/- per month as old age pension from the State. Counsel for the parties were allowed to make submissions qua the report. Counsel for the petitioner on the next date placed on record average sale price of the land owned and possessed by the respondent and on this basis, it was submitted that she owned the property worth a huge amount and therefore could not be said to be an indigent person. The learned trial court held that the yield from the property was only Rs. 2700/- per annum and it was not the value of the property but the yield which has to be taken into consideration. The application was allowed. It is against this order that the present petition has been filed.

I have heard Shri Anand Sharma, learned counsel for the petitioner. Shri Anand Sharma has vehemently contended that the petitioner is owner of 4 kanals of land worth lacs of rupees and cannot be said to be an indigent person. He has also submitted that no opportunity was given to the petitioner to put-forth her case by the learned trial Court before deciding the application.

It would be pertinent to mention that keeping in view the controversy between the parties, this court had passed a detailed order on 20.4.2004. The court took note of the fact that in the certificate issued by the Collector, Hamirpur to Sub Judge, Barsar where the suit was initially filed, her land holding was shown as 2 kanals 3 marlas and her annual income was found to be Rs. 2250/- . When the Collector submitted his report to the District Judge, Hamirpur, her annual income was shown as 2700/- per annum. The Court, therefore, directed the Collector to submit a fresh

detailed report. This report has now been submitted. In this report, it is submitted that the respondent owns 0-08-87 hectares i.e. 2 kanals 06 marlas of land in Patwar Circle, Jamli along with one room, double storeyed slate posh house and cow shed. The respondent also owns 1 kanals 10 marlas of land in village Neela Cheli and 0-13 marlas of land in village Bara-gran, Sub Tehsil Dhatwal, District Hamirpur, HP. Therefore, in all, she owns 4 kanals 09 marlas of land and that her total annual income from all sources has been assessed as Rs. 3300/- per annum out of which only Rs.900/- is the income from landed property and Rs. 2400/- per annum as the income which she is getting as old age pension.

A person is not expected to sell off his or her property to pay court-fees. A Division Bench of this Court in **Gehru** v. **Charan Dass Dogra,** 1981 HPILR(HP Series) 307 held as follows:-

> "By now it is well settled that 'possession of sufficient means' does not mean possession of sufficient property. It is possible that one may be possessed of sufficient property but still may not be possessed of sufficient means. It will depend on the nature of the property. It will also depend whether the person concerned can easily come in possession of sufficient means. All this varies from case to case."

It is apparent that a person need not sell off all his properties to pay the court-fees. Does the law require that the plaintiff who is a poor old lady, should sell off her house and land to claim maintenance from her sister to whom she has gifted all the rest of her property? The answer is obviously is no. Laws are meant to advance and not to hamper the cause of justice. The matter with regard to payment of court-fees is basically between the State and the person liable to pay the court-fees. It cannot be

expected from the respondent to sell off her meagre property to pay court-fees. Therefore, by no stretch of imagination, it can be said that the petitioner is possessed of sufficient means.

Reliance placed by the petitioner on the judgment of a learned Single Judge in **Shiv Lal and others** v. **Nimmi,** 1998 SLJ 1279 is also misplaced. In that case, the facts were totally different. The husband of the person claiming to be indigent was earning Rs.45,000/- per month and it was in this context that the court held that the opposite party should have been given an opportunity to lead evidence. In the present case as for giving an opportunity to the petitioner is concerned as detailed above, before allowing application, notice of the application was given to the petitioner. The petitioner was also given an opportunity to object to the report. The petitioner produced the record of the land owned by the respondent. All these facts were taken into consideration by the learned trial Court and the petitioner had an adequate opportunity to put-forth his case. Furthermore, even from the report of the Collector as received by this Court, it is more than apparent that the respondent is not possessed of any means to pay court-fees. Her total income from all sources including the widow pension is measly Rs.3300/- per annum. Admittedly, the respondent has gifted more than 25 kanals of land to the petitioner. Having taken the said land, petitioner is delaying the case on one pretext or the other.

Keeping in view the aforesaid facts and circumstances , the present revision petition is dismissed with costs quantified at Rs.3300/-, which shall be paid by the petitioner to the

respondent/plaintiff on or before the next date failing which the defence of the petitioner shall be struck off.

In view of the fact that the proceedings in this case started in the year 2002, the learned District Judge, Hamirpur is directed to ensure that the case is heard as expeditiously as possible, if necessary, on day to day basis and to dispose of the same latest by 31st May, 2007.

The parties through their counsel are directed to appear before the learned District Judge, Hamirpur on 26.12.2007. The Registry shall ensure that the record of Civil Suit is sent to the court so as to reach well before the said date.

November 23, 2007 (Deepak Gupta),J.

s.